

Categorized Conception of Islamic Legal History of Ibn Khaldun: A Retrospective Paradigm of Legal Cartography*

İbn Haldun'un İslami Hukuk Tarihi Kategorize Kavramı: Yasal Kartografinin Geçmişe Yönelik Paradigması

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Abstract: Crossboundary legal understanding is a masculine device which would help any jurisdiction solve the issue whose position is at odds with that given system. In terms of realizing that understanding, *inter alia* some theoretical tools function as central players. Among those tools, legal cartography is a very pivotal one which might have triggered the rise of the discipline of comparative jurisprudence in western legal academia in recent decades. In contrast, Islamic *corpus juris* is seen to have been rich with all those conceptions and beyond centuries before. This paper in adopting doctrinal method, aims to explore Ibn Khaldun's treatment of diverse legal methodologies of Islamic Law as mapped with their geological hosts in *Muqaddimah*. This study shows that Ibn Khaldun is an Islamic legal cartographer who by depicting the domain of different doctrinal schools (*madhahib*) as a cartographic paradigm could have predominated the western jurists and legal academics.

Keywords: Muqaddimah, Ibn Khaldun, Comparative Jurisprudence, Legal Cartographer, Legal Transplant

Öz: Sınır ötesi yasal anlayış, herhangi bir yargı yetkisinin, söz konusu sistemle çelişen durumu çözmeye yardımcı olacak eril bir aygıttır. Anlamanın farkına varmak için, bazı teorik araçlar merkezi oyuncular olarak işlev görür. Bu araçlar arasında yasal haritacılık çok önemlidir. Son yıllarda batı hukuk akademisinde karşılaştırmalı hukuk disiplininin yükselişini tetiklemiş olabilir. Buna karşılık, İslami yasaların, tüm bu anlayışlarla ve yüzyıllar öncesinin ötesinde zengin olduğu görülmüştür. Doktrin yöntemini benimseyen bu makale, İbn Haldun'un Mukaddimesindeki jeolojik ev sahipleriyle eşleştirildiği şekilde İslam Hukuku'nun çeşitli yasal metodolojilerini ele almayı amaçlamaktadır. Bu çalışma, İbn Haldun'un, farklı doktrinsel okulların (*madhahib*) alanını,

* This article is a review of the paper presented at the "4th International Ibn Khaldun Symposium" organized on 19–21 May 2017 in Istanbul.

kartografik bir paradigma olarak betimleyip, batı hukukçuları ve hukuk akademisyenleri tarafından ağır basan bir İslami yasal haritacı olduğunu göstermektedir.

Anahtar Kelimeler: *Mukaddime, İbn Haldun, Karşılaştırmalı Hukuk, Yasal Haritacı, Yasal Nakil*

1. Introduction

Apostleship of Muhammad PBUH is the final version of prophetic legacies as designed by the Ultimate Designer Allah SWTA. He Himself declares that “*this day have I perfected your religion for you, completed My favour upon you, and have chosen for you Islam as your religion*” (Al Quran, 5: 3). Reasonably, for Islam to be well fitted for the entire humanity over time and space, there have to be all those ever living elements that would answer any problems they may face till the Last Day. And, of course, so does it possess (Al Qattan, 2001: 285). To begin with, O Muadh, (if any matter is brought before you) by what do you judge? Asked Muhammad PBUH. According to the Book of Allah, he replied. Again he said: if you do not find the solution in it, then by what do you judge? In accordance with the Sunnah of the messenger of Allah, He answered. The messenger questioned him one more; it is neither in the book of Allah nor in the sunnah of the messenger, then what do you do? I will contemplate my reasoning (*ijtihad*) and (to do so) I will spare no thoroughgoing effort unmet, he replied. At hearing such well reasoned answer, his commissioned *hikma* was erupted into appreciating that all praise is due to Allah who facilitated messenger of the messenger of Allah with that contemplation which pleases me (Abu Daud, 2009: 3587; al-Tirmidhi, 1975: 1327). In another Hadith Muhammad PBUH says: you bring disputes to me...some of you may be more eloquent in arguing than others. Verily I judge on the basis of what I hear from you (al-Bukhari, 2002: 7169) and the list goes way longer yet. Reason deeply and you will get to know that *inter alia* legal scholarship in Islam has been greatly promoted through the employment of reason subordinated to Quran-Sunnah.

Jurisprudentially, Islam neither sets forth the detailed laws, with the exception of the key rulings derived from the two higher sources of the noble Quran and Sunnah, nor established any clerical entity to build up official religious doctrine. Rather it has

¹ Rigorous juridical reasoning. It has manifold dimensions. To go deeper into the domain of *ijtihad*, see Abu Ishaq Ibrahim B. Musa B. Muhammad al-Lakhmi al-Shatibi, “al-Muwafaqat” Dar Ibn affan, 1st ed, v. 5 (1997). To know the contemporary approach of *ijtihad*, see Yusri Mohamad, “Contemporary Ijtihad: An Analysis of Individual and Collective Approaches” ISSI, 1st ed, (2016).

offered much wider room and beyond. Therefore, with the very inception of Islam, the culture of extrapolating reasons has been significantly nurtured. the *Fiqh* epistemology came into existence which gave rise to a diverse community of legal scholars who could devise their own methodologies of interpretation, subordinated to the ultimate two sources, and eventually those legal thoughts have been moulded and named after different legal schools. Once numbering in the hundreds, there remain about five dominant in the world today. It is obviously for good reason. Beneath the surface of these dominant schools, all those methodologies are in some way or another, included.

The taxonomy of Quranic legal culture, thus, yields the proposition that Islamic jurisprudence is highly rich with ever evolving juro-dynamics that decorate it with both the flexibility and adaptability to a multitude of societies and regions. Arguably it would offer itself an ability to change and develop over time and space while its core foundation still adheres to its pivotal premise. In showcasing the unique attributes of Islamic law, Wale B Hallaq views that it would opt for those opinions that have become more suitable than others to a particular circumstance and create new opinions when the need arises (Hallaq, 2009: 27). In stark contrast, the western legal systems and, by extension, all other ones from around the globe have been found to tie themselves to the confines of their respective jurisdictions. They had been hardly reported to adapt themselves to any legal cult of another society. To put it more precisely, they rarely recognize various stipulations for the same set of facts, structured possibly by different jurisdictional norms, in approaching any legal phenomenon.

The present venture of western legal practice, however, reveals that western legal personnel are now seen to be widely interested in other jurisdictions along with their own ones. Because, sometimes, state law may yield contradiction which would be reconciled by borrowing foreign legal rules. Eminent jurists torment themselves with concern over the backwardness of their respective national bodies of law, confronting diverse legal systems and analyzing mechanisms of those systems, they seek to determine a more functional devises for their legal practice to be actively dynamic (Sacco, 2000: 1159–1176). Before this analysis embarks upon the thematic concern of this paper, it gives a brief overview of some introductory notes which would help figure out the real import that has been envisioned.

2. Islamic Jurisprudence

2.1 Legal Diversity

Unlike modern western legal science, Islam gives a variety of juridical views on one and the same set of facts. Because, in Islamic legal scholarship, with an exception of a relatively few Quraniq and Sunnatic texts, which are clearly unambiguous in their legal sense, and also suffice to be a dynamic concrete foundation of entire Islamic legal palace, offering some very fundamental rules of law, the rest are not self evident from the sacred sources. Rather they are the products of painstakingly rigorous juridical efforts of the men with highly reasoned legal scholarship. The rulings derived directly from the unambiguous texts, are certain (*qati'*) and therefore, admit of no amendment.² In contrast, all other rulings extracted on the basis of juridical efforts, are always susceptible to further contemplation for them to be altered with an exception of those which are based on the consensus of *sahaba* (the best members of Muslim *ummah*). Such mechanism, indeed, plays a key role in flourishing Islamic legal scholarship. Being entrenched in Islamic jurisprudential historiography, thus, the analysis reveals that mechanism is known as *ijtihad* (thoroughgoing painstaking juridical efforts of extracting laws from the sacred sources of the noble Quran and Sunnah), which functioning dynamically, allows a wide diversity of legal methodologies to be developed within the spectrum of Islamic jurisprudence. The term is reported to be traced in one of the prophetic statements: O Muadh, (if any matter is brought before you) by what do you judge? Asked Muhammad PBUH. According to the Book of Allah, he replied. Again he said: if you do not find the solution in it, then by what do you judge? In accordance with the Sunnah of the messenger of Allah, He answered. The messenger questioned him one more; it is neither in the book of Allah nor in the *Sunnah* of the messenger, then what do you do? I will contemplate my reasoning (*ajtahidu bira'yi*) and (to do so) I will spare no thoroughgoing effort unmet, he replied. He (Muhammad PBUH) was then greatly satisfied with such answer. So he appreciated him saying that all praise is due to Allah who facilitated messenger of the messenger of Allah with such reasoned contemplation which pleases me. Among many, this hadith is one which gives the authoritative basis for rigorous juridical efforts to be employed to derive rulings from the original sources of the noble Quran and Sunnah. Islamic legal culture, therefore, is significantly promoted on the pivotal legal reasoning. The

² Verse no 36 of the Chapter al *Ahjab* (The Confederates) of the holy Quran can be well cited; Now whenever God and His Apostle have decided a matter, it is not for a believing man or a believing woman to claim freedom of choice insofar as they themselves are concerned: for he who [thus] rebels against God and His Apostle has already, most obviously, gone astray.

derivatives extracted from the texts are termed as *furu'* (branches). These *furu'* are not absolute or certain; rather they harbor the sense of probability (*janniyat*) in terms of impelling binding force. They are always susceptible to *ijtihad*, and *ijtihad* is that unique device, as Islamic jurisprudence suggests, which has offered much room for diverse methodologies to be originated within the Islamic legal codex. The openness of Islamic legal scholarship eventually gave rise to many different schools of legal methodologies. Though monolithic they are in terms of their origin, those schools are so unique and highly sophisticated that every single legal school would correspond to what in comparative jurisprudence is called a distinct legal family, a point to be elaborated more later.

2.2 Doctrinal Schools

The comprehensive inclusivity of legal reasoning in Islamic jurisprudence, widens the scope of legal functionalism. Analogy, principles of public good (*masalih mursala*), policy of preference (*istihsan*), elastic legal device (al hlatu al shariyah),³ doctrine of necessity (al najriyatu al dharuriyah) are some key dynamic tools of *ijtihad* (Al-Qattan, 2001: 229, 247, 248; al Zuhaili (a), 1985). By the dint of these devices, the Islamic jurists could have largely contributed to structuring a well organized framework of legal scholarship.

So one can easily see that shortly after the first Islamic century had passed away, the doctrinal norms, which had been formulated to extract legal rulings from the sacred texts and based on the consensus of Muslim *ummah*, and the *ratio legis*, though slowly, had appeared to be the plausible legal schools. By the end of the second century *hijra* (eighth century) those doctrinal norms could manage to assume the full status of legal schools. The schools, which predominantly survive the challenges of time and space, are four: the Hanafi, Maliki, Shafi' and Hanbali (Ibn Khaldun, 2005: 2–5). Another two also play a crucial role in this domain: Jahiri and Shia.

The Arabic term for doctrinal legal school is "*majhab*" (derived from *jahaba yajhabu* meaning to go; to take a way). This word typically means place of going or time of going. Subjectively it denotes to different meanings which are logically intertwined

³ Perhaps Muhammad B. Hasan al-Shaibani (189 H.) had initiated writing on this projection known as *al-Makharij fi al-Hial*; Abu Bakr Ahmad B. Umar al Khassaf, a third hijri century theologian, had compiled another treatise on the same subject matter. His book on this topic is known as "*Kitabu al Khassaf fi al Hial*"

with each other. Sometimes it implies to the opinion or view,⁴ a jurist takes, while some another time the notion is meant to be the aggregate of collective doctrinal norms of master jurist and that of his disciples who are loyal to him.

How and when was the term stripped of its narrower sense of view or idea, and promoted to be meant a distinct doctrinal school? The history of Islamic legal studies tells us that the early stage of *tadrees al fiqh* (legal education) was particularistic where it was held in the form of a small study group. This group, however, by the opening of the second century *hijri*, evolved into a relatively greater congregation and the meticulous scholars seemed to be the trusted teachers for so learning. Though, noticeably, it moved ahead, any distinguished legal methodology or reasoning had not been traced yet. The methods and principles which the students were taught at that time were not fully structured. It was the very beginning of formative period of classical Islamic jurisprudence. Because in some study groups ritual regulations were taught, while some others given teaching with regard to inheritance.

With the passage of time the spectrum of legal learning was becoming more obvious. During the mid second century *hijri*, legal education appeared to assume more consolidated form. With regard to various phenomena, substantive law as systematized by the jurists (*faqih*) had become more conspicuous. This period, the study groups were found to be highly emotive and hotly debated. By so doing, they had indeed, shaped their methods which subsequently emerge to be their legal doctrinal approaches. So when they had dealt with any fact, they had used those approaches to establish their own conception of legal notions and thereby justified their reasonings which were further cemented with the arguments of following students who could surround those teachers. However it does not necessarily mean that a student always strictly followed his teacher' doctrine; rather the students were frequently seen to sit in many study groups to enrich his legal understanding.

Shortly after that period, legal education (*fiqh*) had evolved to be matured. Because, with a firm conviction of learning legal principles and doctrines more comprehensively, jurists were widely seen to travel far and near, in search of expert *fuqaha* (legal

⁴ The word has been reported to be used among *sahaba* (the companions of prophet pbuh). Mentionable one is found in the debate took place between Abu Bakr and Umar respectively the first and second caliph of Islam over the dismissal of Khalid Ibn Walid the then Major General of Muslim Ummah (Ameeru Askar al Muslimeen) at one stage of his concluding remark umar says this is my view (*haja huwa majhabi*)

academics). In this period a judge was generally found to likely apply those doctrines which he learnt from his teacher. Again the absolute loyalty was not strictly followed. If any teacher proved to be highly qualified, he might emerge as a meticulous jurist, delivering legal knowledge to his students. Numan Ibn Thabit Abu Hanifa, Malik Ibn Anas, Sa'd Ibn Layth, Ahmad Ibn Hanbal are some remarkable ones who could excel this landscape.

Until the midst of second century hijri, the very notion *madjhab* was brought away from the meaning of a general juridical view and promoted to be meant a wider spectrum of methodological juridical norms. In other words, an amalgam of all legal doctrines shaped by a certain jurist had been identified as his individual *madjhab* or personal school; and not yet a distinctive doctrinal school. Any student, who had followed such jurist, had been called his associate (*sahib*).⁵ Because, an exclusive loyalty to any individual jurist, was, still not maintained.

However, by the last quarter of the second century hijri, the prospectus of the word *madjhab*, however, had emerged to be a distinctive doctrinal school. From this time onward, Islamic legal education had started experiencing unparallel development and continued for centuries.

3. Comparative Law

3.1 Emergence of Comparative Law

The entire western world was oblivious to the comparative law till the midst of nineteenth century except some German professors who had been seen to have some elements of comparative legal understanding in their lectures. This section, therefore, leaving aside the theoretical aspects of comparative law, will give an insight about when and why comparative legal understanding had emerged.

The second half of the nineteenth century, however, would be traced as the embryonic stage of comparative law. In 1862, International Association for Progress in The Social Sciences held a congress in Brussels, which is known as "*the 1862 Brussels Congress of the International Association for Progress in the Social Sciences*" (Clark, 2000: 871). The association's officers lived not in Brussels but in different countries: France,

⁵ Abu yusuf Ya'qub Ibn Ibrahim and Muhammad ibn Hasan Al Shaibani were the two associates of Abu Hanifa (sahiba Abi Hanifa). They are frequently refer to be sahiba al Imam al A'jam (صاحبا الامام الاعظم) . See al Hidayah by Burhanuddin al Murginai, Al Quduri By Abu al Hasan.

Germany, Great Britain, Italy, the Netherlands, Poland, Portugal, Russia, Spain, Switzerland and the United States.

In an earlier executive meeting, the Association did dedicate one of its five membership and annual meeting sections to the comparative legislation. With an awareness of knowing other legal systems, this congregation had decided to study political, social and penal laws of different countries and how those laws would have shaped the people's social conditions, and to what extent, those conditions are susceptible to change and reform. It worth mentioning here that among the reports the delegation had delivered, "what are the bases and means for good codification of laws" and "recognition of foreign corporation," were two salient ones.

Comparative law had stepped into a landmark horizon in 1900. During July 31–August 4, 1900, a congress was organized, for the first time in the name of International Congress of Comparative Law which was held in Paris. In the 1900 Paris International Congress of Comparative Law: RENDEZ-VOUS DES SAVANTS DU MONDE, the delegates had attended from different countries. Turkey would be placed in a special place in the list.⁶

After having conducted the program, *inter alia*, four objectives were determined. Of them, the First objective was verily crucial one, which was framed from a comparative legal perspective: which method would be more providential to analyze diverse legislation. Observation, comparison and adaptation would be three instrumental tools for meaningful comparative approaches. Comparative law would consider reasonable rapprochement among diverse legal systems. To satisfy such conviction, historical understanding of law is significantly crucial. History, therefore would supplement the comparative law. It is indeed instrumental in identifying the characteristics of other jurisdictions. Thus, observed the scholars of the congress. In this congress, they had suggested many guidelines and formulated regulations which has been continued to echo in all the subsequent comparative legal enterprises both in Europe and in Anglo American legal scholarship. In short, this congress had played a key role for comparative law to move towards a more consolidated landscape of legal science. This was, however, the European history of comparative law emergence. Shortly after that another congress was held by America.

⁶ Among many others I have mentioned only one. Because the turkey would then have possibly represented the entire Muslim world

In September 28–30, 1904, another congress was held in the name of the 1904 St. Luis universal congress of lawyers and jurists in St. Luis. Unlike the Paris one, this congress was attended by a group of scholars ranging from professors to the lawyers. The congress was presided by associate justice David J Brewer of the United States Supreme Court. A bulk majority of the delegates were from twenty six American law schools who had participated the program (De Cruz, 1999).

The 1932 Hage International Congress of Comparative Law was held in august 2–6, 1932. It would be especially observed that this congress was hosted by a pure academic society. In contrast, back in the latter part of the first half of the nineteenth century, teaching from comparative view point in German universities was seen to be malaise.

Subsequently many other conferences and academic programs were conducted across the western legal scholarship domain and still persist to continue which indicates that it has managed to possibly triumph all the epistemological challenges and intellectual imperialisms.

This is a succinct overview of the emergence of comparative law in the western academia whose embryonic journey has started from the second half of the nineteenth century, and is now taking its emotive spring across the western part of the globe (Gordley, 2000: 1003; Sacco, 2000: 1159; Calabresi & Stephanie, 2005: 743).

3.2 Objectives of Comparative Legal Studies

The ever increasing growth of comparative law would bear witness to the fact that it might serve, in the long run, core purposes of cross-jurisdictional catalogues of legal rules within the epistemological boundaries of jurisprudential domain. A comparatist thinks that Comparative law is meant to be the intellectual conceptions which underlie the principal institutions of one or more foreign legal systems (Valcke, 2004: 713–740). It is a method of reasonable rapprochement among diverse legal systems. It is a highly sophisticated legal scholarship, which is superior form of juridical art. When a lawyer goes through foreign legal systems, he would devise an archetype of legal institutions which reaches a higher level of generality that avoid each system's particularities (Clark, 200: 871). It is a science of comparison which gives a law student the wide premise of choices. A student confronted with one solution to a legal problem has a tendency to assume it is the right one. When he is confronted with two,

he is encouraged to think (Gordley, 2000: 1008–09). Comparative law, thus, by looking at different jurisdictions, assists legal practices: it would provide new paradigms for legislator and offer new examples to judges (Sacco, 2000: 1159–1176). Arguably due to the growth of comparative law, foreign law's persuasive authority (Glenn, 2000: 977) has been reported to be noticeably visible in national litigation across the global legal arena. Here, the observation of the prominent chief justice of Wisconsin Supreme court, United States befittingly worth mentioning. He cites :

I do mean to say that when courts from around the world have written well-reasoned and provocative opinions in support of a position at odds with our familiar American views, we would do well to read carefully and take notes.

...

Indeed, we can cross the divide separating us from other jurisdictions around the world. And if we do so with the modest intent to borrow ideas on classifying, discussing, and solving a particular problem, we should not be deterred by unfamiliarity with foreign legal systems. We may fail to understand a particular system of law or even misinterpret some foreign decisions. Nevertheless, we may also find unexpected answers or new challenges to domestic legal issues (Shirley & Michael, 1997: 273, 284, 286).

Therefore, after giving an investigative account over the development of comparative law, which it had undergone throughout the last two centuries both in academia and courtroom, it permits to conclude that the entire western legal community tells us almost in unison that comparative law Comparative legal science has been thought to envisage to release the legal community from dogmatism, by exposing them to more than one legal stipulation, sharpen and widen the scope of their legal reasoning, which would be facilitated by looking at different legal systems, and eventually it would help promote a wide diversity of legal reasoning, and a superior form of legal solution from many, which is a surest pathway towards innovation.

3.3 Manifestation of Islamic Jurisprudence in Comparative Legal Apparatus

As comparative law has been centrally seen to be the means of studying and examining different legal systems, western jurists have devised many comparative tools that would facilitate them to come up with a more viable practical approach. The tools, they structured, clearly echo some key ideas of Islamic jurisprudential mechanisms.

They have devised the idea of harmonization which would serve a superb form of legal functionalism for any position at odds with the respective domestic laws. This notion would be likened, though not completely, with the idea of *talfiq*⁷ (al Zuhaili (b), 1985: 1/10–11, 61) which permits Islamic jurists to look at a variety of opinions given by different legal schools (*madjahir*), dissect them and, by taking a more practically betterment oriented conclusion, individual or public, formulate a decision and thereby releases them from dogmatism of being absolutely tied to a certain legal school (*madjhab*).

As the function of comparative legal science is to venture beyond national boundaries and look at foreign jurisdictions which helps them have a vivid picture of a globally diverse legal ocean, the initiative of introducing the idea of legal family had been taken by the western academics. It was made first in 1900 in the First International Congress of Comparative Law held in Paris. In 1905, Esmein suggested a classification of legal systems into five families of law: Romanistic, Germanic, Anglo-Saxon, Slavic and Islamic. In 1978, a classificatory system had been adopted by David and Brierley based on ideology and legal technique to classify the world's legal systems into Romano-Germanic, Common Law, Socialistic, Islamic, Hindu and Jewish, Far East and Black African (De Cruz, 1999: 34). Like this, there have been many other ventures to group the world's laws into a variety of legal families.

The very notion "legal family" denotes that there have been many legal systems. One among them would be dominantly universalistic and practically followed by particularistic legal systems in a sense that the latter apply the same legal norms and doctrines which former does. Indian subcontinent legal systems would be better examples, who apply the common law norms in their respective jurisdictions (India Pakistan and Bangladesh). So being in line with common law norms, these jurisdictions are said to be the members of Common Law legal family. This concept clearly manifests the idea of predominantly remaining doctrinal schools (Hanafi, Maliki, Shafi' Hanbali, Jahiri and Shi'a). Because, at the early stage of *Fiqh* epistemology, hundreds of doctrinal schools had been developed. But due to their sophistication, these four

⁷ *Talfiq, takhaiyyur and tatabb al-rukhas* are three important tools that had been used and still continues to be so employed in utilizing pragmatic eclecticism in Islamic adjudication process. For winning an in-depth understanding of these perceptions and their legal status in both Islamic corpus juris and court trends, see Ahmed Fekry Ibrahim, "pragmatism in Islamic Law: A Social and Intellectual History" Syracuse University Press, New York (2015).

schools could remain predominant. In other words, these four schools are universalistic while the disappeared ones were particularistic which had been functionally subsumed by the former.

For their comparative enterprise to navigate its way through that ocean, both easily and hermeneutically, the western comparatists could manage to use the device of legal cartography, which would offer an integrated titanical map of world legal and socio-legal cultures.

“Panorama of The World’s Legal System” by Wigmore would be the first effort of this type. However, Roberto. L. Mantilla Molina, Perhaps, would, for the first time, use the very term “cartography” to mean the global legal mapping (Hazard, ND: 1043–1052). Shortly after that it has continued to be viewed as an effective tool of offering an inclusive global legal landscape which may provide a vast panorama of different jurisdictional norms. Because legal cartography would bring diverse legal systems into a more close, intimate and stressed position (Gordley, 2000: 1008–09). As it may give legal community a sketchy depiction of world’s legal systems, by which they may have a better understanding of different jurisdictional solutions on any given fact, domestic body of law and foreign ones are wrestling with, it may rightly be seen to be the driving force of comparative legal science. For it to have been so, legal cartography indeed enlivens the purpose of comparative law.

After having gone through the ventures rendered to better and foster the position of comparative law across the western academia, one subtle point has to be underpinned here that a mechanism which gives a clear depiction of predominantly surviving various jurisdictions, is, of course, a driving device for comparative law to go ahead. As legal cartography is a purest pathway towards an integrated conception of multiple legal cultures, it would be thought to be the main apparatus which could have given rise to the emergence of comparative jurisprudence discipline more effectively. With this foundation, it has to be observed that the historiographical approach of the geological hosts of different doctrinal schools within Islamic legal codex would play a significantly crucial role to propose a legal cartographic paradigm which is the pivotal force for comparative jurisprudence to move forward.

4. Discourse of Ibn Khaldun

In order to provide a reasoned answer to the relevance and methodology of *Muqaddima* in moulding legal cartography, this research has discussed, though briefly, the dynamics of Islamic jurisprudence and strived to find out the underlying objectives of comparative law. So it now intends to relate the relevance of the discourse of Ibn Khaldun to the thought experiment and then elaborate his methodologies as found in *Muqaddimah*.

4.1 Relevance of Ibn Khaldun's Approach

Due to its uniqueness, Islam could manage to give rise to the emergence of many doctrinal schools. Once numbering hundreds, now four/six remains predominant, which might have subsumed all the legal norms that had been developed by the disappeared doctrinal schools. These schools are so highly sophisticated that each of them would befittingly pose a distinctive legal entity and thereby correspond to that which western jurisprudence calls a distinct legal family. Because, as in the western legal families, there have been different opinions on the same fact, for instance, Under Common Law contract, ownership of good and price transfers respectively from each other once acceptance is complete. While, civil law tells that, ownership transfers, only when the goods is received by buyer (Makdisi, 1998: 1874–75), so is the case with different legal schools of Islamic law and even beyond. As such, Islamic law would be grouped into four main legal families: Hanafi legal family, Shafi legal family, Maliki legal family and Hanbali legal family. Again the main function of legal cartography, as comparative legal taxonomy reveals, is to group the world's legal systems into different legal families, describe their geo-political hosts and thereby give a grand picture of global legal systems. So viewed in this way, it explains the methodology of Ibn Khaldun.

4.2 Ibn Khaldun's Approach in *Muqaddma*

Ibn Khaldun dedicated some 30 pages of third volume of *Muqaddima* for Islamic law. A few pages but so striking that it would, indeed, cover the spectrum of Islamic jurisprudential history. He views that all rulings in Islamic law either directly comes from the holy Quran and Sunnah or extracted from that on the basis of juridical contemplation. Because, like others he sees, texts are pregnant with so many probabilities which strongly demand rigorous juridical understating (Ibn Khaldun, 2005: 3/3). Then he views that all *sahaba* were not expert in jurisprudence (Ibn

Khaldun, 2005: 3/4). Again the jurist *sahaba* also did not take the same footing. Eventually in course of time many legal doctrines have developed over the time.

He further notes that due to the tremendous development of Islamic empire, there arises a need for more inclusive thinking. He is found to classify Islamic legal scholarship into two groups: Ahl al Rai (the team of juridical contemplation and analogy) and Ahl Al Hadith (the team of textual application) (Ibn Khaldun, 2005: 3/4). He views that the former has been greatly found in Iraq and non Arab countries and the latter in Mecca and Medina. Due to inherent necessity, many jurists strived painstakingly which gave rise to a multitude of legal principles in Islamic jurisprudence.

He is finally seen to categorize all those legal principles under certain master jurists and then map the geo-political hosts of those categorized legal doctrines. He describes that...then doctrinal legal understanding was tied to those four master jurists: Numan Ibn Thabit Abu Hanifa, Malik Ibn Anas, Muhammad Ibn Idris al Shafi and Ahmad Ibn Hanbal (Ibn Khaldun, 2005: 3/6).

Abu Hanifa has been followed greatly by the people of Iraq, Hind, China and all the non Arab countries far and near. Also it remains predominant in trans-Oxiana countries. His student was awarded [the highest post of judiciary] in the Abbasid government. His doctrinal school has been comprehensively nurtured during this period. This played a key role to familiarize Hanafi school across the major part of the Muslim world. Juridical contemplation and analogy was his central methodology to extract legal ruling from the two highest sources (Ibn Khaldun, 2005: 3/7).

The followers of Imam Malik Ibn Anas are especially found in Andalus (today known as Spain and also included Portugal and adjacent area). Muslims from this part of the world were seen to travel from their homeland and end their journey to Hijaz. They are rarely reported to cross the threshold of Hijaz. Because, there located the holy city of Medina, which was the center of knowledge at that time. Malik Ibn Anas was widely known as the imam of Medina for his outstanding scholarship in Hadith. Along with power shifting, the centre of knowledge was also shifted to Bagdad. As after him they kept following his students. They are hardly seen to go Iraq for the quest of Islamic knowledge.

His disciples however are recorded to have travelled across the lands of Egypt and Iraq. Qadi Ismail, Qadi Abu Bakr al Abhari, Qadi Abdul Wahab are among those jurists who become famous in Iraq (Ibn Khaldun, 2005: 3/9). In Egypt, Ibn Qasim, Ashhab, al Harith Ibn Miskin and others managed to prove their scholarship (Ibn Khaldun, 2005: 3/9).

Yahya Ibn yahya al Laithi travelled from the land of al Andalus and met with Imam Malik and learnt Muatta from him (Ibn Khaldun, 2005: 3/9). Asad Ibn Furat came from Africa (Ibn Khaldun, 2005: 3/9). He first wrote from the pupils of Abu Hanifa and then turned to the Maliki school and wrote from Ibn Qasim and arranged a book in a logical sequence of fiqhi issues. His writing is known as Asadyiah. Subsequently many scholars dedicated their efforts to convey the Maliki doctrines far beyond.

Ibn khaldun records that Maliki school took three different phases: the Kairouanian followers whose master was Sahnun who learnt from Ibn Qasim; the cordovians whose master was Habib who learnt from Imam Malik, and Ibn al Majishun and others; the Iraqis, whose teacher was justice Ismail (Ibn Khaldun, 2005: 3/10). Egyptian Malikis run the same line as the way Iraqi malikis did. Justice Abdul Wahab, as mentioned above, came to Egypt from Bagdad who contributed a lot to propagate Maliki doctrine in this region.

Here one thing has to be interjected that many western jurists now believe that the common law system would have been initiated with the transplant of Islamic legal paradigm as found in Islamic Cecily during the close of tenth century. For instance, Jury system, a revolutionary legal tool for change from tyranny to the systematic juristic functionalism in English legal system, had been thought to have its origin in the Islamic legal concept of *istihqaq* which has been developed in Maliki school (Makdisi, 1998–1999).

The followers of Muhammad Ibn Idris al Shafi are mostly found in Egypt (Ibn Khaldun, 2005: 3/7). When he reached there, Boni Abd al Hakam met with him with great enthusiasm and honour. Scholars from different parts of Egypt gathered around him and learnt his jurisprudence. So his teaching was fostered across the Egypt. Shortly after that due to the emergence of Rafidji state, fiqh epistemology of ahl al Sunnah wa al Jama was expelled from Egypt. However Justice Abdul Wahab travelled from Bagdad to Egypt and rendered his jurisprudential efforts. So subsequently the main stream *fiqh*

was restored there. Under the Ayubi regime, shafi school experienced a tremendous development. Ijjuddin ibn Abd al Salam, Taqiuddin Ibn Daqiq al Id, Taqiuddin al Sabki, Muhiu al din al Nawawi are some scholars who contributed to propagate shafi school across the land of Syria and Egypt.

Ahmad Ibn Hanbal was greatly followed in Syria, Iraq and its neighbouring localities (Ibn Khaldun, 2005: 3/10). His methodology was to strictly follow and maintain the exact text of Sunnah (the apparent import of the text) and avoiding analogy as much as possible. Though primarily this doctrine was taking primal place in Bagdad, but due to Tatar attack it was forced to finally disappear from Bagdad and it remains dominant in Syria only, he observes.

To sum up, Ibn khaldun would group Islamic jurisprudence into two main categories i.e. analogical deduction and just textual application. He then managed to give a succinct picture of where these two types of jurisprudence took place, and of how they have been nurtured and developed over the time.

5. Conclusion

Islam through unfolding the Book of Allah could fundamentally change the course of religious social and political history of the world. Through its insistence on consciousness and knowledge, the holy book could engender among its followers a spirit of intellectual curiosity and independent inquiry, ultimately resulting in the splendid era of learning and scientific research which gave rise to the intellectual revivalisms. Of them ibn khaldun is that great personality whose intellect could have penetrated in countless ways and by-ways in the mind of the west. As we have seen from the earlier discussion that Ibn Khaldun would have demonstrated that *madhahib* or doctrinal schools within Islamic legal codex are significantly unique and have the strata of distinct legal families as that of the west. Therefore it is quite sensible to impel that nature of comparison is inherent in Islamic law. So the western comparative legal science, which took more than two centuries for full fledged emergence (and perhaps still wrestling with localistic dogmatic senses), would easily import a coherent comparative legal paradigm from Islamic jurisprudence. The objectives of comparative law, which are yet to be determined even after a multitude of congresses, conferences and academic ventures, might greatly benefit from Islamic jurisprudential tools. Arguably the methodology of Ibn Khaldun, as seen with regard to the emergence of *madhahib* (Islamic legal schools) and hosts who have received those schools

respectively, would have been thought to convey the concept of legal cartography, a pivotal force for comparative law to move forward, to the western comparative jurisprudence. Hence Islamic law predominantly could underpin the premise of comparative jurisprudence and Ibn Khaldun could pioneer the western academics in devising legal cartography.

References

Al-Quran

- Abu Daud, Sulaiman Ibn Ash`ath. (1998). *Kitab al-Sunan*. Commentary: Muahammad Auwamah. Beirut: Muassasah al-Rayyan. Vol. 4.
- Al Qattan, Manna Khalil. (2001). *Tarikhu al Tashri' al Islami*. Beirut: Resalah Publishers.
- al Zuhaili, Wahaba (a). (1985). *Nadhryatu al Djarurati al Shariyah*. Beirut: Resalah Publishers.
- al Zuhaili, Wahaba (b). (1985). *Alfiqhu al Islami wa Adillatuhu*. Damascus: Daru al Fikr.
- Al-Bukhari, Abu Abdullah Muhammad Ibn Ismail. (2002). *Al-Jami al-Sahih*. Damascus & Beirut: Dar Ibn Kathir.
- al-Tirmidhi, Muhammad Ibn Isa. (1975). *Sunan al-Tirmidhi*. Commentary: Ahmad Muhammad Shakir. Cairo: Mustafa al-Babi al-Halabi. Vol. 3.
- Calabresi, Steven G. and Stephanie, Dotson Zimdahl. 2005. The Supreme Court and Foreign Sources of Law: Two Hundred Years of Practice and the Juvenile Death Penalty Decision. *Wm. & Mary L. Rev.* 47. pp. 743
- Clark, David S. (2000-2001). Nothing New in Comparative Law in 1900 and Today. *Tulane Law Review.* 75. pp. 871-910
- De Cruz, Peter. (1999). *Comparative law in a changing world*. Abingdon: Routledge.
- Glenn, H. Patrick. (2000). Comparative Law and Legal Practice: On Removing the Borders. *Tulane Law Review.* 75. pp. 977.
- Gordley, James. (2000). Comparative law and legal education. *Tulane Law Review.* 75 pp. 1003-
- Hallaq, Wael B. (2009). *An Introduction to Islamic Law*. New York: Cambridge University Press.
- Hazard, Jhon N. (ND). "cartography and the world's legal culture" retrieved from: <https://archivos.juridicas.unam.mx/www/bjv/libros/2/642/10.pdf> on 15th April 2017.
- Ibn Khaldun, Abd al Rahman. (2005). *al Muqaddimah*, Beirut: Maktabah al Dar al Baidha. v 3.
- Ibrahim, Ahmed Fekry. 2015. *Pragmatism in Islamic Law: A social and Intellectual History*. New York: Syracuse University Press.
- John A. Makdisi. (1998-1999). The Islamic Origins of The Common Law, *N.C. L. Rev.* 77. pp.1647-
- Mohamad, Yusri. 2016. *Contemporary Ijtihad: An Analysis of Individual and Collective Approaches*. Kuala Lumpur: ISSI.
- Sacco, Rodolfo. (2000-2001). One hundred years of comparative law. *Tulane Law Review.* 75. pp.1159-1176

Shirley S. Abrahamson & Michael J. Fischer. (1997). The World's a Courtroom: Judging in the new millennium. *Hofstra L. Rev.* 26: 273, 284, 286

Valcke, Catherine. (2004). Comparative Law as Comparative Jurisprudence: The Comparability of Legal Systems. *The American Journal of Comparative Law* 52, No. 3. pp. 713–740.